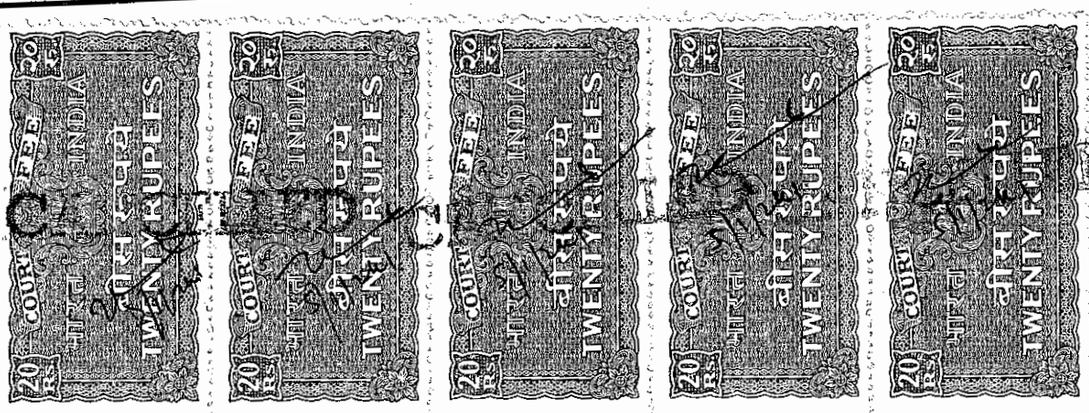

IN THE C.G.HIGH COURT OF JUDICATURE AT BILASPUR.

WRIT PETITION NO. 49 /2001

Petitioner: Bhuvan Lal Sahu S/o Brij Lal Sahu, Professor in Hindi Dept. of Kamla Nehru College Korba, Tah & Dist: Korba, Chhattisgarh.

Versus

Respondents:

01. ~~Government~~ State of Chhattisgarh through it's Chief Secretary, C. G. State Secretariat, D K Hospital premises, Raipur, C.G.
02. Principal Secretary, Dept. of Higher Education, Govt. of C.G., C. G. State Secretariat, D K Hospital premises, Raipur, C.G .
03. Commissioner, Higher Education, Government of Chhattisgarh, Raipur, C.G.
04. Deputy Registrar, Firms & Societies, Bilaspur, C.G.
05. Registrar, Guru Ghasi Das University, Bilaspur, C.G.
06. Shri Vijay Jaisawal S/o Satya Narayan Jaisawal, The Chairman, Kamla Nehru Mahavidyalaya Samity, Korba, Tah & Dist: Korba, C.G.
07. Shri Dina Nath Pandey S/o Baldeo Prasad Pandey, aged 62 years, Presently working as Principal, Kamla Nehru College, Korba, Tah & Dist: Korba, C.G.
08. Shri Jasraj Jain S/o Late Hastimal Jasraj Bohra, R/o Near Bus Stand, Main Road, Korba, Tah & Distt: Korba, C.G.

P.R. No. 98/2001 Presented by Shri ... 5-1-01

Writ Petition u/a article 226/ 227 of the constitution of India.

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक W.P.No. 49/2001 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

8.5.2001 :

Mr.R.K.Singh for the petitioner.

Mr. Gautam Bhaduri for the State.

Mr.Manindra Shrivastava for respondent no.5.

Mr.Prashant Mishra for respondents 6,7 & 8.

The issue that is raised in this petition is as regards appointment of respondent no.7. The respondent no.7 retired from service at the age of 62 years. Thereafter he was given re-appointment for a period of two years. ~~extension of two years on contract basis.~~ The petitioner contends that there is no provision under which extension of service of respondent no.7 could have been given. It may also be stated that as of now the age of retirement is 62 years. When the age of retirement was fixed at 60, it was contemplated in Rule 26 that a permanent teacher shall be entitled to be in the service of the college until he completes the age of 60 provided if the governing body is satisfied that extension of service is in the interest of the institution ,it may extend his service by two years beyond the age of 60.

Mr.Mishra submits that the present case should be examined in the light of provisions stated above. It

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित ...2...	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

appears to me that after the age of retirement was raised from 60 to 62 years it can not be said that such proviso should continue to operate.

Mr.R.K.Singh submits that governing body was constituted on 17.3.97. Since the life of the governing body is 2 years, the said governing body expired on 16.3.99; therefore, ~~however~~ when, the extension was given to respondent no., ~~and~~ there was no validly constituted governing body of the college ~~institution~~. It is, in fact, the contention of the writ petitioner that ~~he has a case of~~ there is no scope for re-appointment which is not contemplated under any provision of law for the time being in force governing such college. Referring to the document annexure P-4, the auther of which is the Registrar himself, dt. 3.11.2000, it is submitted that there is a finding that there are various irregularities in the working of the governing body. It is at this stage that some submissions have been made that it is ~~the~~ time a direction should be issued to the competent authority to take necessary steps to constitute a governing body under the relevant provisions prescribed in this behalf. As far as the State is concerned it has been submitted that since the present issue is an internal affair, it does not want to come into picture. However, it has also been submitted that in an appropriate case management may

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आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	..3.. आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

be superseded. Another submission made on behalf of the state is that the respondent no.7 has been given appointment after he retired on attaining the age of superannuation, it is not possible for any state grant to be used in paying the salary of respondent no.7.

Mr.Manindra Shrivastava appearing on behalf of respondent no.5 submits that ~~affairs~~ this case and particularly the situation that is placed before this court would be ~~equally~~ similarly governed by the provisions of the College Code. It is submitted by Mr.Shrivastava that the provisions of College Code are binding upon the affairs of this college. The age of retirement is sixty two years. This fact is binding upon the college as regards services of teachers / lacturers. As regards the appointment of respondent no.7 for a period of two years after he had retired from service on completion of 62 years. Mr. Shrivastava is of the view that such appointment is not contemplated under the relevant provisions or the said Code.

Mr.Prashant Mishra,learned counsel for respondents 6,7 and 8 submits that the present arrangement of appointing respondent no.7 for another period of two years has been made as there is no other eligible person to hold

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आदेश का दिनांक आदेश क्रमांक सहित	...4... आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the post of principal. As I have stated above, Mr. Mishra submits that such arrangement will come within the purview of section 26. On a careful perusal however, I would reiterate that such arrangement can not be said to be envisaged under the aforesaid provisions particularly after the age of retirement has been raised from 60 to 62 years. Therefore, @@ in my view even if ~~whether~~ such appointment was made by ~~authority~~ of duly constituted governing body, unless such arrangement is clearly contemplated under th provisions of college code , to allow any authority to make such arrangement would not be a healthy practice and such can not be accepted, Mr.Mishra further submits that in order to resolvethe present situation / problem the Registrar may be directed within the purview of section 33 of the Registration of Societies Act 1973 to take necessary steps so that a duly constituted governing body may function. It is, therefore, submitted that until such exercise is done , respondent no.7 may be allowed to continue. Mr.R.K.Singh submits that the Principal of the College by virtue of office is the ex officio Secretary. The very fact that respondent no.7 has been given appointment for two years, according to Mr.Singh is not at all authorised under any relevant rules and regulation. In fact Mr.R.K.Singh has submitted that not only that re-appointment of respondent no.7 should be set-aside but that even the money that has already been paid as salary

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

सामला क्रमांक ..... सन् 200

..5.. विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

should be recovered from respondent no.7 inasmuch as the very fact of re-appointment is illegal. The impugned order of appointment is stated to have been issued by respondent no.8 on 8.5.2000. However, the appointment took effect from 1.9.2000.

On perusal of the averments made in the pleadings and also the impugned order of appointment issued in favour of respondent no.7 and after careful perusal of the relevant provisions of the college code and after hearing learned counsel for the parties I am of the view that re-appointment of respondent no.7 is unsustainable. Accordingly the impugned order of re-appointment issued in favour of respondent no.7 is set-aside. However since he has already rendered service as Principal, whatever money by way of salary has been paid ~~and the same~~ need not be recovered from him. I am also of the further view that an educational institution ought to be handeled with great care. Everything is not well with this college. It must be set right without delay. One way suggested by Mr.Mishra is that Registrar should be directed to take immediate steps to see that society constitutes a new governing body in the interest of the institution. It is necessary that a new governing body should be constituted at the earliest.

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित --6--	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

However, in view of the finding of the registrar as regards functioning of the governing body I am also further of the view that it will not inspire public confidence if in the meantime the present committee is allowed to function before the next governing body is constituted. Everything that is done should look transparent. In this view of the matter the present committee i.e. Managing committee should also cease to function and instead Registrar shall see to it that management is looked-after by him and through his arrangement. Let whole exercise of having a new governing body be ~~constituted~~ carried out as early as possible and not later than two months from today.

A copy of this order be sent to the Registrar, ~~Firm and Society~~ Registered Societies with a direction that exercise indicated above should be carried-out in accordance with rules and regulations or procedure prescribed in this behalf.

Sd/-
Chief Justice

J

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